BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JENNA I. SMITH	)	
Claimant	)	
V.	)	
	)	
WAL MART ASSOCIATES, INC.	)	Docket No. 1,063,267
Respondent	)	
AND	)	
	)	
ILLINOIS NATIONAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and insurance carrier (respondent), through John Rathmel, requested review of Administrative Law Judge Kenneth J. Hursh's May 9, 2016 Award. Dennis Horner appeared for claimant. The Board heard oral argument on August 11, 2016.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the Award's stipulations.

ISSUES

The judge awarded claimant: (1) permanent partial disability (PPD) benefits for a 12% whole body functional impairment; (2) $500 in unauthorized medical expenses; and (3) future medical benefits.

Respondent argues claimant is not entitled to permanent partial disability benefits for a hernia. Respondent contends Dr. Prostic's final opinion was partially based on an examination paid with claimant's unauthorized medical allowance, and therefore, his opinion should be disqualified or claimant's right to unauthorized medical reimbursement should be forfeited. Respondent asserts claimant did not prove a need for future medical treatment. Claimant maintains the Award should be affirmed.

The issues are:

1. What is the nature and extent of claimant's disability, specifically whether permanent partial disability compensation is prohibited by K.S.A. 2012 Supp. 44-510d(b)(22) for a repaired traumatic hernia?

2. Is claimant entitled to future medical treatment?

3. Is claimant entitled to unauthorized medical reimbursement?

FINDINGS OF FACT

Claimant, currently 29 years old, is an order filler for respondent. On August 8, 2012, she felt a pop in her left hip while lifting a pallet, with immediate pain in her left hip and groin. Respondent referred claimant for medical treatment, including surgical repair of a traumatic hernia.

Aakash Shah, M.D., a board-certified orthopedic surgeon, was claimant's authorized treating physician from November 12, 2012 until April 22, 2013. Claimant reported pain, tingling and numbness down her left leg. Dr. Shah ordered an MRI of claimant's left hip, the results of which he described as "essentially normal."[1] Dr. Shah diagnosed claimant with left hip pain, hip iliopsoas flexor tendonitis/strain and trochanteric bursitis/iliotibial band syndrome. Dr. Shah provided injections and anti-inflammatory medication, but claimant received little improvement.

Dr. Shah's final diagnosis was hip pain. Dr. Shah gave claimant a 7% permanent partial lower extremity impairment rating pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.) (hereinafter *Guides*). Dr. Shah was unable to determine the cause of claimant's symptoms and recommended a second opinion to evaluate and possibly treat claimant's pain. Dr. Shah noted claimant had an antalgic gait and testified a chronic antalgic gait can put additional stresses on a person's low back, which could possibly require additional medical treatment.

Jeffrey Salin, D.O., a board-certified orthopedic surgeon specializing in hips, was claimant's authorized treating physician from August 30, 2013, through October 21, 2013. Straight leg raise testing was positive at the first evaluation. Claimant had significant pain when moving her left hip. After injecting claimant's hip with cortisone, Dr. Salin noted claimant's problems were not from inside her hip joint, but were due to soft tissue injury. Dr. Salin's ultimate diagnosis was left hip tendonitis. While claimant reported low back complaints to Dr. Salin, he was not looking to treat claimant's low back, just her hip.

Dr. Salin testified he used the *Guides* to give claimant a 1% permanent partial impairment to the left lower extremity due to tendonitis. The doctor indicated claimant did not need work restrictions and would not require future medical treatment for her hip.

Dr. Salin testified a person walking with an antalgic gait over a period of time can develop low back or opposite extremity problems. Dr. Salin indicated claimant's straight leg testing was positive, which is "usually indicative of radiculopathy"[2] and led him to believe claimant's problems stem from her back.

---

[1] Shah Depo. at 7.

[2] Salin Depo. at 9.

At her attorney's request, claimant saw Edward J. Prostic, M.D., a board-certified orthopedic surgeon, on December 16, 2013. Claimant complained of pain from her posterior left hip to her lateral hip with daily numbness going down to her left great toe. She reported increased symptoms with sitting, standing, walking, bending, squatting, twisting and lifting. Dr. Prostic noted claimant walked with a mild antalgic gait. Dr. Prostic diagnosed claimant with symptoms of left L5 radiculopathy and recommended an MRI of her lumbar spine and consideration of epidural steroid injections. Dr. Prostic charged $603 for this evaluation, which claimant's attorney paid. Using Dr. Prostic's report, claimant went to a preliminary hearing and the judge ordered respondent to provide claimant additional medical treatment in a February 12, 2014 ruling.

Alexander Bailey, M.D., a board-certified orthopedic spine surgeon, was claimant's authorized treating physician from April 3, 2014, to August 7, 2014. Claimant complained to Dr. Bailey of low back and left hip pain radiating into her big toe. Dr. Bailey noted claimant walked with a slow, methodical gait. Dr. Bailey diagnosed claimant with low back pain with radiculopathy, hip pain and groin pain, status post hernia repair. He ordered a lumbar MRI and a hip MRI, both of which he interpreted as normal, and an EMG study, which he noted was negative for radiculopathy, neuropathy or significant neurologic abnormality in claimant's legs. He provided sacroiliac (SI) joint injections, which barely decreased claimant's pain. Dr. Bailey's final assessment was: (1) low back pain with radiculopathy of unknown etiology and (2) minimal SI joint dysfunction. The doctor did not think claimant's pain was due to her SI joint.

Dr. Bailey testified claimant's work injury resulted in a hernia that was properly evaluated and treated. He opined the work injury caused no objective pathology or abnormality in her lumbar spine or left leg. Dr. Bailey testified:

> . . . I used due diligence, experience, and clinical acumen to evaluate a patient's subjective complaints to look for abnormalities to initiate evaluation and treatment further. Patient was afforded the recommended MRI scans of the lumbar spine, MRI scans of the hip, and EMGs of the lower extremities with findings both under my read as well as radiologists and other clinicians to be normal. Normal is normal. I have searched every known anatomical area for pathology to correlate with the patient's subjective complaints and findings were negative.[3]

Dr. Bailey assigned a 0% impairment using table 72 in the *Guides*, stated she required no work restrictions and indicated she did not need future medical treatment for her lumbar spine. The doctor was not against over-the-counter medication, but noted physical therapy was unnecessary. Dr. Bailey did not indicate claimant was malingering, which he would "sometimes" or "usually" do if he held such opinion.[4]

---

[3] *Id*. at 19-20.

[4] *Id*. at 18-19.

On January 26, 2015, claimant returned to Dr. Prostic for an independent medical evaluation at her attorney's request. Claimant complained of pain from her low back to her left great toe with intermittent numbness and tingling. Dr. Prostic noted claimant had continued L5 radicular symptoms and significant back stiffness, despite extensive low back treatment. Dr. Prostic charged $764 for this visit, which claimant's attorney paid.

Dr. Prostic testified he used both examinations to form his opinion regarding claimant's functional impairment. The doctor testified he initially evaluated claimant to provide treatment recommendations and the second time to provide an impairment rating.[5] Dr. Prostic did not consider claimant's hernia in reaching his rating. Dr. Prostic assigned claimant a 15% whole body functional impairment pursuant to the *Guides* and testified:

> This is a compromise between the range of motion model and the DRE model. Her motion was consistently poor when I saw her. So I thought that was valid and thought her impairment was far in excess of DRE lumbosacral 2. I thought the 15 percent number was appropriate.[6]

Dr. Prostic testified claimant will "most likely"[7] require future medical treatment, such as medication prescribed from a physician, perhaps physical therapy and a CT myelogram if her leg symptoms worsened.

On October 13, 2015, Peter Bieri, M.D., evaluated claimant for a court-ordered independent medical examination. Dr. Bieri was asked to address claimant's impairments from her work injuries using the *Guides*. Claimant reported that her hernia surgery largely abated her symptoms, but she still had some left groin pain. She also complained of pain in her lumbar spine, left worse than right, which was aggravated by moving her left leg. She also noted left leg numbness at rest.

Dr. Bieri assigned claimant a 5% impairment for her left inguinal hernia and a 5% impairment under DRE Thoracolumbar Category II for a combined 10% whole body functional impairment pursuant to the *Guides*. It was Dr. Bieri's opinion claimant's future medical needs "remain speculative," but will likely include anti-inflammatories, neurotransmitter modulators, muscle relaxants, TENS unit, physical therapy, occupational therapy, job modification and perhaps injections and diagnostic imaging.[8] Dr. Salin, while noting claimant's hip treatment was exhaustive, did not disagree with Dr. Bieri's recommendation regarding future medical treatment.

---

[5] See Prostic Depo. at 16.

[6] *Id*. at 14.

[7] *Id*. at 15.

[8] Bieri Report (filed Nov. 19, 2015) at 6.

Claimant continues to work for respondent as a shipping loader. Her low back pain increases with activity. Claimant testified her left leg goes numb all the way to her foot on a daily basis. Claimant testified her back, left hip and left leg problems are intertwined and she continues having problems involving her hernia. Claimant has modified her daily activities, such as no longer riding a motorcycle with her husband or coaching gymnastics.

On pages 3 through 5 of the Award, the judge stated:

> Here, the $500 expense was billed and paid by February 19, 2013,[9] long before Dr. Prostic rendered his rating report. Following the December 16, 2013 examination, Dr. Prostic commented on diagnosis of the injury and treatment recommendations, and mentioned nothing concerning permanent impairment. The doctor conducted a second examination before issuing a rating. It is held the expense for the December 16, 2013 examination was not for obtaining an impairment rating. The situation in this case was distinguishable from cases cited by the respondent where a rating report was issued without a second examination.
>
> The claimant is entitled to reimbursement of $500 unauthorized medical expense.
>
> . . . The dispute in the case was whether the work accident caused permanent injury to left hip and/or low back.
>
> . . .
>
> Diagnostic tests did not reveal surgically treatable abnormalities in either the low back or left hip, but physicians consistently noted physical symptoms in both areas affecting the claimant's physical function. The preponderance of the evidence showed the claimant suffered injuries to the left hip and low back from the August 8, 2012 work accident. The preponderance of the evidence also showed permanent impairment to both areas.
>
> Two out of three physicians who commented on the low back found permanent impairment. The court was most persuaded by the opinion of Dr. Bieri, who was an independent medical examiner not hired by either party. The court adopts Dr. Bieri's rating of 5% impairment to the body as a whole for the back injury.
>
> Both physicians who assessed the claimant's left hip found permanent impairment. The court found the two rating opinions equally persuasive and finds the claimant's permanent impairment to the hip is the average of Dr. Shah's 7% and Dr. Salin's 1% ratings. It is held the claimant's permanent impairment for the hip injury is 4% to the lower extremity. Taking note of the *Guides*, 4th Edition's 40% lower extremity to whole body conversion factor, 4% to the lower extremity equates to 1.6%, rounded to 2%, impairment to the body as a whole.

---

[9] The finding of an unauthorized medical payment by February 19, 2013, is likely a typographical error. The Board suspects the payment was made by February 19, 2014, because it is unlikely respondent paid $500 toward Dr. Prostic's evaluation roughly 10 months before it occurred.

> Hernias appear on the K.S.A. 44-510d schedule of injuries, whereas the hip and back do not. According to case law, if an injury is both to a scheduled member and a non-scheduled portion of the body, compensation should be awarded under the non-scheduled injury section, K.S.A. 44-510e, *Bryant v. Excel Corp.,* 239 Kan. 688, 722 P.2d 579 (1986), *Goodell v. Tyson Fresh Meats*, 43 Kan.App.2d 717, 235 P.3d 484 (2009).
>
> K.S.A. 44-510e provides for permanent partial disability based on permanent functional impairment according to the *Guides*, 4th Edition. The court therefore adopts Dr. Bieri's *Guides*-based hernia rating of 5% to the body as a whole. In the *Guides* Combined Values Chart, 5%, 5%, and 2% impairments combine to an overall 12%. It is held the claimant's permanent partial disability from the August 8, 2012 injury is 12% under K.S.A. 44-510e. The [claimant] still works for the respondent at a comparable wage, so there was no claim for K.S.A. 44-510e work disability.
>
> . . .
>
> Dr. Prostic testified the claimant "would most likely have a need for additional medical treatment to be given by a licensed physician." Dr. Bieri reported, "The claimant's future needs in reference to this injury remain speculative, but will likely include ongoing treatment which may well include anti-inflammatories, neurotransmitter modulators, muscle relaxants, TENS unit, physical therapy, occupational therapy, job modification, and perhaps injections and diagnostic imaging."
>
> The opinion was somewhat general, in Dr. Prostic's case, and somewhat equivocal, in Dr. Bieri's case, but the court finds the opinions amounted to medical evidence sufficient to overcome the K.S.A. 44-510h presumption. The claimant shall be awarded future medical benefits.

Respondent appealed.

PRINCIPLES OF LAW & ANALYSIS

1. Claimant, as a result of her injury by accident, sustained a 7% permanent functional impairment to the body as a whole.

K.S.A. 2012 Supp. 44-501b(b) requires an employer to pay compensation to an employee incurring personal injury by accident arising out of and in the course of employment. Claimant carries the burden of proof to persuade the trier of facts by a preponderance of the credible evidence that her position on an issue is more probably true than not true based on the whole record.

K.S.A. 2012 Supp. 44-510d provides, in relevant part:

> (a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i, and amendments thereto. The injured employee may be entitled to payment of temporary total disability . . . or temporary partial disability . . . .
>
> (b) If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:
>
> . . .
>
> (22) For traumatic hernia, compensation shall be limited to the compensation under K.S.A. 44-510h and 44-510i, and amendments thereto, compensation for temporary total disability during such period of time as such employee is actually unable to work on account of such hernia, and, in the event such hernia is inoperable, weekly compensation during 12 weeks, except that, in the event that such hernia is operable, the unreasonable refusal of the employee to submit to an operation for surgical repair of such hernia shall deprive such employee of any benefits under the workers compensation act.
>
> (23) Loss of or loss of use of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.
>
> . . .
>
> (c) Whenever the employee is entitled to compensation for a specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability, except [for a healing period following amputations].

K.S.A. 2012 Supp. 44-516(a) states:

> In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct. The report of any such health care provider shall be considered by the administrative law judge in making the final determination.

Board review of an order is de novo on the record.[10] A de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the judge.[11] The Board, on de novo review, makes its own factual findings.[12]

The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.[13] The trier of fact decides which testimony is more accurate and/or credible and may adjust the medical testimony with the testimony of claimant and any other testimony relevant to the issue of disability. The trier of fact must decide the nature and extent of injury and is not bound by the medical evidence.[14]

The Board adopts the judge's conclusions regarding claimant's low back and hip impairment (5% for the low back based on Dr. Bieri's rating and a 2% whole body rating when averaging and converting the two hip ratings to the body as a whole). These impairments combine to be 7% to the body as a whole. However, we diverge regarding the finding that claimant has hernia impairment that warrants payment of PPD benefits.

Under K.S.A. 2012 Supp. 44-516(a), the Board must consider Dr. Bieri's court-ordered report in making a final determination of the case and we have done so. Unfortunately, Dr. Bieri's hernia rating is contrary to Kansas law.

Dr. Bieri indicated he rated claimant's hernia using the *Guides*. The *Guides* are not tailored to the Kansas statutory scheme and where there is a conflict between our workers compensation law and the *Guides*, the state law controls.[15] The fact the *Guides* allow a hernia rating does not mean Kansas law recognizes that a worker may recover PPD benefits for a hernia impairment.

Under K.S.A. 2012 Supp. 44-510d(b)(22), other than medical treatment, a worker with a traumatic hernia is entitled to temporary total disability benefits, but not PPD benefits. Under K.S.A. 2012 Supp. 44-510d(c), when compensation is allowed under such statute, such compensation is exclusive of all other compensation other than medical

---

[10] See *Helms v. Pendergast*, 21 Kan. App. 2d 303, 899 P.2d 501 (1995).

[11] See *In re Tax Appeal of Colorado Interstate Gas Co.*, 270 Kan. 303, 14 P.3d 1099 (2000).

[12] See *Berberich v. U.S.D. 609 S.E. Ks. Reg'l Educ. Ctr.*, No. 97,463, 2007 WL 3341766 (Kansas Court of Appeals unpublished opinion filed Nov. 9, 2007).

[13] *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

[14] *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991), *superseded on other grounds by statute*; see also *Smalley v. Skyy Drilling*, No. 111,988, 2015 WL 4366531 (unpublished Kansas Court of Appeals opinion filed June 26, 2015).

[15] See *Redd v. Kansas Truck Center*, 291 Kan. 176, 196-97, 239 P.3d 66 (2010).

treatment. Kansas appellate courts have ruled that in order for the consequences of a hernia to be deemed a whole body impairment rather than a scheduled injury under K.S.A. 2012 Supp. 44-510d(b)(22), there must be a separate and distinct injury flowing from the traumatic hernia.[16] For instance, in *Lozano* and *Goudy*, the injured workers also suffered nerve damage after surgeries to repair their hernias. Here, there was insufficient evidence to prove that claimant sustained a separate and distinct injury from her traumatic hernia. Claimant's contention that she clearly sustained nerve injury in addition to a traumatic hernia lacks corroborating evidence. Accordingly, the Board finds claimant did not prove by a preponderance of the evidence that she sustained a whole body impairment as the result of her work-related hernia.

The Board agrees with the judge that it is proper to combine an impairment rating for a whole body or non-scheduled injury with an impairment rating for an injury covered by the schedule. Both types of injuries contemplate an award of PPD benefits. However, we find it improper to combine impairments for a whole body injury, a scheduled injury and a traumatic hernia, an injury for which PPD benefits are not recoverable.

2. Claimant is entitled to future medical treatment.

K.S.A. 2012 Supp. 44-510h states:

> (a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.
>
> . . .
>
> (e) It is presumed that the employer's obligation to provide the services of a health care provider . . . shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

---

[16] *Lozano v. Excel Corp.*, 32 Kan. App. 2d 191, 81 P.3d 447 (2003); *Goudy v. Exide Technologies*, No. 106,385, 2012 WL 3822798 (Kansas Court of Appeals unpublished opinion filed Aug. 31, 2012); see also *Rondon v. Tyson Fresh Meats, Inc.*, No. 98,101, 2008 WL 1722253 (Kansas Court of Appeals unpublished opinion filed April 11, 2008) (The "court reaffirmed the notion that nerve damage is a separate and distinct injury from a traumatic hernia; however, the panel found that substantial competent evidence did not support a finding that Rondon suffered from such an injury.")

K.S.A. 2012 Supp. 44-525(a) states, in part:

> No award shall include the right to future medical treatment, unless it is proved by the claimant that it is more probable than not that future medical treatment, as defined in subsection (e) of K.S.A. 44-510h, and amendments thereto, will be required as a result of the work-related injury.

Both Drs. Prostic and Bieri indicated claimant would most likely require future medical treatment. Dr. Bieri's statement that claimant's specific future medical needs "remain speculative" does not alter his opinion that she will likely need future medical treatment. Claimant met her burden of proving her need for future medical treatment using the appropriate preponderance of the evidence standard.

3. Claimant is entitled to unauthorized medical reimbursement.

K.S.A. 2012 Supp. 44-510h(b)(2) states:

> Without application or approval, an employee may consult a health care provider of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for the fees and charges of such health care provider up to a total amount of $500. The amount allowed for such examination, diagnosis or treatment shall not be used to obtain a functional impairment rating. Any medical opinion obtained in violation of this prohibition shall not be admissible in any claim proceedings under the workers compensation act.

Respondent argues claimant violated the statutory prohibition against using the unauthorized medical examination allowance to obtain an impairment rating. Respondent cites *Deguillen,*[17] in which the worker was evaluated by Dr. Murati for treatment recommendations. Deguillen's attorney subsequently requested a rating opinion from Dr. Murati based on the information obtained at the initial examination and without a second examination. The Court ruled Deguillen tried to circumvent the statute by artificially separating the examination from the requested rating report, thus gaining the advantage of the $500 allowance for a prohibited purpose. The Court stated:

> We hold that in order for an unauthorized medical examination to be eligible for reimbursement under K.S.A. 2006 Supp. 44-510h(b)(2), no impairment rating based upon that examination may be made a part of the record, upon penalty that the examination expense may not be reimbursed. In order for an unauthorized medical examination to be eligible for reimbursement under K.S.A. 2006 Supp. 44-510h(b)(2), no impairment rating may be solicited from that physician either as a part of the initial engagement or thereafter. Although employees are not prohibited

[17] *Deguillen v. Schwan's Food Manufacturing, Inc.*, 38 Kan. App. 2d 747, 172 P.3d 71 (2007), *rev. denied* 286 Kan. 1177 (2008), *overruled on other grounds by Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 214 P.3d 676 (2009).

> from seeking independent advice on work-related injuries and may seek reimbursement for up to $500, the clear intent of the legislature is to prohibit such funds being applied to an improper impairment rating.[18]

Here, Dr. Prostic conducted two separate examinations. The first examination concerned a physical examination, determining claimant's injuries, obtaining lumbar spine x-rays, the need for treatment and whether claimant's injury by accident was the prevailing factor in her injuries. The statute prohibits none of those activities. Using such opinion, claimant proceeded to a preliminary hearing and obtained medical treatment. The only rating provided by Dr. Prostic was after the second, totally separate examination. *Deguillen* only denied a worker the unauthorized medical allowance because a doctor was asked to provide an impairment rating based on the prior examination.

The Board addressed *Deguillen* in *Roets,*[19] in which the worker's medical expert performed an initial evaluation to determine the need for additional medical treatment. The unauthorized medical allowance was requested for that examination. The medical expert examined the worker a second time for the purpose of providing an impairment rating. No request was made to use the unauthorized medical allowance for the second examination. The Board distinguished *Roets* from *Deguillen,* finding the medical expert in *Roets* performed separate examinations for the purpose of determining the need for medical treatment and to generate an impairment rating. The current matter is more akin to *Roets* and distinguishable from *Deguillen*. The Board finds claimant did not violate the prohibitions contained in K.S.A. 44-510h(b)(2). Claimant is entitled up to the maximum unauthorized medical allowance.

CONCLUSIONS

1. Claimant sustained a 7% permanent impairment rating to the body as a whole due to low back and left hip injuries, but no impairment to her hernia based on Kansas law.

2. Claimant is entitled to future medical treatment.

3. Claimant is entitled to her unauthorized medical allowance and Dr. Prostic's rating report was properly in evidence.

---

[18] *Id*. at 756. As an aside, the Board notes that the literal wording of K.S.A.2006 Supp. 44-510h(b)(2) does not say, "In order for an unauthorized medical examination to be eligible for reimbursement under K.S.A. 2006 Supp. 44-510h(b)(2), no impairment rating may be solicited from that physician either as a part of the initial engagement or thereafter." The statute simply does not preclude an injured worker from using the same physician for an evaluation for purposes allowed to be paid as unauthorized medical and a separate evaluation for an impairment rating.

[19] *Roets v. Molded Fiber Glass Construction Products*, No. 1,024,365, 2009 WL 1996464 (Kan. WCAB June 30, 2009). See also *Amador v. National Beef Packing Co.*, No. 107,315, 2012 WL 4937587 (Kansas Court of Appeals unpublished opinion filed Oct. 12, 2012), *rev. denied* 298 Kan. ___ (2013).

AWARD

WHEREFORE, the Board modifies the May 9, 2016 Award as listed in the "Conclusions" section.

The claimant is entitled to 22 weeks of temporary total disability compensation at the rate of $453.88 per week or $9,985.36 followed by 28.56 weeks of permanent partial disability compensation at the rate of $453.88 per week or $12,962.81 for a 7% whole body functional impairment, making a total award of $22,948.17.

As of the date of this order, there is due and owing to the claimant 22 weeks of temporary total disability compensation at the rate of $453.88 per week in the sum of $9,985.36 plus 28.56 weeks of permanent partial disability compensation at the rate of $453.88 per week in the sum of $12,962.81 for a total due and owing of $22,948.17, which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of August, 2016.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Dennis Horner
DHorner@BKTPLaw.com

John Rathmel
jrathmel@evans-dixon.com

Honorable Kenneth J. Hursh